

RETURN OF COMPENSATION BY THE EMPLOYEE IN THE EVENT OF COLLECTIVE REDUNDANCY

Supreme Court Ruling n° 7/2024 of 21 June aims to standardise case law regarding the deadline for returning the compensation received by the employee as a result of collective redundancy, in order to rebut the legal presumption of acceptance of the termination of the employment contract.

The question raised in this appeal was the deadline for returning the compensation received in the event of collective redundancy. This is because paragraph 4 of article 366 of the Labour Code states that the employee is presumed to have accepted the dismissal when he receives the full amount of compensation from the employer in the event of collective redundancy. However, paragraph 5 of this same article states that this presumption can be rebutted if, at the same time, the employee hands over or makes available, in any way, the full amount of the compensation paid by the employer.

Thus, to rebut the presumption that he or she accepted the dismissal, the employee must simultaneously return the compensation received. However, it should be clarified why this act has to be "simultaneous" and when it has to take place, since both doctrine and case law have given varying answers on this matter.

The Supreme Court of Justice has ruled that the solution that best guarantees certainty and predictability is that the worker only has to repay the amount received as compensation when he challenges the dismissal in court or requests a judicial suspension of the dismissal.

The Public Prosecutor's Office also took the view that, *in the case of restitution, the rebuttal of the presumption has to fulfil two requirements: the return of all the compensation at the same time as the opposition to the dismissal.* In fact, the simultaneous return can only be articulated with the opposition to the dismissal, and not with the receipt of the compensation, since the latter situation is, strictly speaking, a physical impossibility.

Opposition to the dismissal, in turn, can be triggered by a procedure to suspend the dismissal or by the action to challenge the dismissal itself, under the terms of articles 386, 387 and 388 of the Labour Code and articles 33-A et seq., 51 et seq. and 98-C et seq. of the Labour Procedure Code.

The law stipulates that the worker can request preventive suspension of the dismissal within five working days of receiving the notice of dismissal.

The deadline for the employee to oppose the dismissal is by applying the appropriate form to the competent court within 60 days of receiving the notice of dismissal. The action to challenge the collective dismissal must be brought within six months of the contract's termination date.

This judgement also states that the deadlines for initiating the procedure or action should serve as a limit for the restitution of compensation, so that the worker can have the necessary time to seek advice and consider whether or not to challenge the dismissal, a situation that always has an impact on his life and is difficult to manage.



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